

PART 90—PROCEDURE FOR CHALLENGING CERTAIN POPULATION AND INCOME ESTIMATES

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AUTHORITY: 13 U.S.C. 4 and 181.

SOURCE: 44 FR 20647, Apr. 6, 1979, unless otherwise noted.

§ 90.1 Scope and applicability.

These rules prescribe the administrative procedure available to States and units of local government to challenge the current estimates of population or per capita income developed by the Bureau of the Census.

§ 90.2 Policy of the Bureau of the Census.

It is the policy of the Bureau of the Census to provide the most accurate population and per capita income estimates possible given the constraints of time, money, and available statistical techniques. It is also the policy of the Bureau to provide States and units of local government the opportunity to challenge these estimates and to present probative evidence relating to the accuracy of the estimates.

§ 90.3 Definitions.

As used in this part (except where the context clearly indicates otherwise) the following definitions shall apply:

- (a) *Bureau* means the Bureau of the Census, Department of Commerce.
- (b) *Challenge* means, in accordance with this part, the process of objecting

to or calling into question the Bureau's population or per capita income estimates of a State or unit of local government by that State or unit of local government. A demand for adjustment to the General Revenue Sharing Act, Pub. L. 92-512, section 102(b), as amended (31 U.S.C. 1222(b)) does not constitute a challenge within the meaning of this part.

(c) *Director* means Director of the Bureau of the Census, or an individual designated by the Director to perform under this part.

(d) *Estimate* means a statistically derived intercensal population or per capita income figure prepared to update earlier census figures.

(e) *State* includes the District of Columbia.

(f) *Unit of local government* means the government of a county, municipality, township, place, or other minor civil division, which is a unit of general government below the State.

§ 90.4 General.

This part provides a procedure for a State or unit of local government to challenge the population or per capita income estimates of the Bureau. The Bureau shall receive these challenges and attempt to resolve them informally with the locality. If the challenge is not resolved informally, the challenging State or unit of local government may then, at its option, proceed formally.

§ 90.5 When an informal challenge may be filed.

An informal challenge to the population or per capita income estimates may be filed any time up to 180 days after the release of the estimates by the Bureau of the Census. Publication by the Bureau of the Census and simultaneous publication of a release notification in the FEDERAL REGISTER shall constitute release. A challenge to any estimate may also be filed any time up to 180 days from the date the Census Bureau, on its own initiative, revises that estimate.

If, however, a State or unit of local government has sufficiently meritorious reason for not filing in a timely

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manner, the Census Bureau has the discretion to accept the challenge.

[50 FR 28768, July 16, 1985]

§ 90.6 Where to file challenge.

A challenge must be prepared in writing by the unit of government and is to be filed with the Chief, Population Division, Bureau of the Census, Room 2011, Federal Building 3, Washington, D.C. 20233.

§ 90.7 Evidence required.

The challenging State or unit of local government shall provide whatever evidence it has relative to the challenge at the time the challenge is filed. The Bureau may request further evidence.

§ 90.8 Review of challenge.

The Chief, Population Division, Bureau of the Census, or the Chief's designee shall review the challenge and the evidence supporting the challenge and shall attempt to resolve the challenge.

§ 90.9 When formal procedure may be invoked.

In the event the Chief, Population Division, is unable to resolve the challenge to the satisfaction of the challenging State or unit of local government, the challenging State or unit of local government shall be informed in writing of the reasons for the outcome and of its right to proceed formally.

§ 90.10 Form of formal challenge and time limit for filing.

The formal challenge shall be in writing and may be mailed or hand delivered to the Director, Bureau of the Census, Washington, D.C. 20233. The formal challenge shall include a list indicating the material submitted to the Chief, Population Division, during the informal stage, and shall include any additional relevant material it chooses to submit. The formal challenge shall be filed within 30 days of the date the State or unit of local government receives notification by certified mail (return receipt requested) of its right to proceed formally. If, however, a State or unit of local government has a sufficiently meritorious reason for not filing in a timely manner, the Bureau

has the discretion to accept the formal challenge.

§ 90.11 Appointment of hearing officer.

Upon receipt of a formal challenge filed in accordance with this part, the Director will appoint a hearing officer to receive written and oral evidence.

§ 90.12 Qualifications of hearing officer.

The hearing officer, a person not involved in the preparation of the estimates being challenged, shall be appointed by the Director from a roster of employees of the Bureau of the Census who have been approved in advance by the Assistant Secretary for Administration, Department of Commerce.

§ 90.13 Offer of hearing.

The hearing officer shall receive the formal challenge and shall notify the State or unit of local government in writing of (a) its right to a hearing prior to the development of a recommended decision for the consideration of the Director; and (b) its right to the development of a recommended decision for the consideration of the Director without a hearing. If the State or unit of local government requests that a hearing be conducted, the hearing officer shall establish the date, time, and meeting place for the hearing, in accordance with § 19.14a.

§ 90.14 Hearing.

(a) The hearing shall be conducted by the same hearing officer who collected the documentary evidence, if possible, and shall be held at Bureau of the Census headquarters in Suitland, Md., unless the hearing officer determines that the hearing should be held elsewhere.

(b) The hearing shall be conducted in a manner so as to bring out the pertinent facts relating to the challenge.

(c) The rule of evidence will not be strictly enforced but irrelevant and unduly repetitious testimony shall be excluded.

(d) Cross-examination of all witnesses is permitted and all testimony shall be received under oath or affirmation.

(e) The hearing officer shall have the authority to: (1) Administer oaths or

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affirmations, (2) rule on the admissibility of evidence, (3) limit the number of witnesses, (4) exclude any person from the hearing room for contumacious conduct or misbehavior that obstructs the hearing, (5) perform other such acts as are necessary or appropriate to the efficient conduct of any proceeding, and (6) make initial findings, analyses, and recommendations.

(f) The hearing shall be recorded but no written record will be prepared unless the Bureau so orders or unless the challenging locality desires one in whole or part and pays the costs of such a written record, or the apportioned costs should the Bureau also desire a written record.

(g) The hearing officer shall prepare findings, analyses, and recommendations and shall transmit them along with all documentary evidence received and the tape or written record (if any) of the hearing to the Director.

[44 FR 20647, Apr. 6, 1979, as amended at 50 FR 18990, May 6, 1985]

§ 90.15 Decision by Director.

Upon receiving the material specified in § 90.14(g), the Director shall (a) review the findings and recommendations of the hearing officer, and (b) prepare and transmit a letter to the challenging State or unit of local government stating the decision and the reasons therefor. A copy of the hearing officer's findings, analyses, and recommendations shall also be transmitted to the challenging State or unit of local government, and is otherwise publicly available. This decision is final for the Department of Commerce.

§ 90.16 Notification of adjustment.

In the event that the Director finds that the population or per capita income estimate should be adjusted, the Bureau shall promptly inform the appropriate governmental agencies of the revision.

§ 90.17 Timing for hearing and decision.

A maximum period of 120 days, unless additional time is required for sufficiently meritorious reason, shall be provided beyond the closing date for the filing of informal challenges to allow for (a) resolution of informal

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challenges, (b) appointment of the hearing officer, and (c) the completion of formal hearings. A maximum of 30 additional days shall be allowed for deliberations by the hearing officer and staff. A maximum of an additional 30 days shall also be provided beyond this during which the Census Bureau Director must rule on all cases. Neither the timing nor the general provisions contained in these regulations shall affect the rights of communities to a review through the data improvement program of the Office of Revenue Sharing under the provisions of Pub. L. 92-512, section 102(b), as amended (31 U.S.C. 1222(b)). Localities challenging only through the Office of Revenue Sharing may not have access to a formal hearing as provided in these regulations.

§ 90.18 Representation.

A challenging unit of government may be represented by its chief executive officer or by counsel, or other duly authorized representative as designated by the chief executive officer in writing to the Bureau.

PART 100—SEAL

Sec.

- 100.1 Authority.
- 100.2 Description.
- 100.3 Custody.

AUTHORITY: R.S. 161, as amended, sec. 3, 68 Stat. 1012, as amended (5 U.S.C. 301, 13 U.S.C. 3).

SOURCE: 25 FR 2163, Mar. 16, 1960, unless otherwise noted. Redesignated at 50 FR 23947, June 7, 1985.

§ 100.1 Authority.

Pursuant to section 3 of Title 13, United States Code, the Bureau of the Census official seal and design thereof, which accompanies and is made a part of this document, is hereby approved.

§ 100.2 Description.

Seal: On a shield an open book beneath which is a lamp of knowledge emitting rays above in base two crossed quills. Around the whole a wreath of single leaves, surrounded by an outer band bearing between two stars the words "U.S. Department of Commerce" in the upper portion and "Bureau of the Census" in the lower